IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2304 OF 2005

Ashwin Wankawala ....Petitioner

Versus

Union of India & Ors. ....Respondents

Mr.Shyam Divan, Senior Counsel with Mr.Vicky Singh i/b M/s.Dhruve Liladhar & Co. for the Petitioner.

Mr.Y. R. Mishra with Mr.Y. S. Bhatye for Respondent No.1.

Mr.Mahendra Gehlani with Mr.Ali Murtuja i/b Law Charter for Respondent No.3.

CORAM : DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 20TH SEPTEMBER, 2005.

P.C. :

1. The Petitioner carries on business as a sole proprietor in the firm name and style of “Manish Builders” . Respondent No.2 is the Appellate Authority for Industrial And Financial Reconstruction. Respondent No.3 is the Dhanamal Silk Mills Pvt.Ltd.

2. The Petitioner has in effect challenged an order dated 29th

June, 2005 passed by Respondent No.2 and sought an order directing Respondent No.2 to consider and accept a scheme and proposal submitted by him of a purported revival/rehabilitation of Respondent No.3. The case in a nutshell is that, Respondent No.3 was at one time a sick undertaking within the meaning of that expression under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the said Act"). A series of attempts at reviving the company failed. A series of schemes for the same were rejected by the Board for Industrial and Financial Reconstruction (BIFR). The Petitioner had submitted a scheme unsolicited by any of the parties. In the meantime the accumulated losses ceased to be equal to or exceed the net worth of the Company. Respondent No.2 by the impugned order therefore did not deem it necessary to consider any proposal/scheme under Section 18 of the Act including that of the Petitioner. The Petitioner, however, contends that his proposal for revival of the company ought to be considered nevertheless as it is allegedly in the larger interest of the workmen and the creditors. None of them have in fact supported the Petitioner. The Petition is unsustainable.

3 It is necessary to state the facts only briefly.

(a). Respondent No.3 filed a reference under Section 15(1) of the Act, which was registered as Case No.295 of 1987. The BIFR appointed Bank of India as the Operating Agency under Section 17(3) of the Act to examine the technical and financial viability of Respondent No.3 and to prepare a scheme for its rehabilitation.

(b). The Operating Agency having reported that it was not viable to operate the unit, the BIFR by an order dated 20th June, 1989 issued a notice to Respondent No.3 to show cause why it should not be wound up. By an order dated 29th June, 1990, the BIFR proposed winding up of Respondent No.3 and communicated the same to this Court as per the provisions of the Act. The order was challenged by Respondent No.3 and the workers union, Surat Silk Mills Labour Union. The Appeals were dismissed by an order dated 15th July, 1993 passed by Respondent No.2. Respondent No.3 filed a Writ Petition challenging the said order of dismissal. By an order dated 23rd November, 1993, this Court set-aside the order of Respondent No.2. Respondent No.2 thereafter by its order dated 3rd March, 1994 set-aside the order of the BIFR dated 29th June, 1990 and directed the

BIFR to consider a proposal submitted by one Peacock Chemicals Pvt. Ltd. and to decide the matter afresh in view of the changed circumstances.

4. During the aforesaid proceedings, the Central Bank of India and Dena Bank filed suits in this Court being Suit No.2855 of 1992 and Suit No.89 of 1994 respectively against Respondent No.3 for recovery of their dues. The said suits were transferred to the Debts Recovery Tribunal.

5 (a). Thereafter, the BIFR considered the proposal of Peacock Chemicals Pvt. Ltd. as well as that of the workers union but not having found them viable, once again formed the opinion that Respondent No.3 should be wound and communicated the same to this Court. The Union's Appeal against the order was dismissed on the ground of limitation. The Writ Petition filed by the Union against the said order was dismissed by an order dated 16th November, 1998 by this Court. On 12th April, 1999, the Union's Special Leave Petition against the said order was also dismissed as withdrawn to enable the Union to move this Court for a review of its order.

(b). By an order dated 6th February, 2001, a Division Bench of

this Court reviewed the order dated 16th November, 1998, set-aside the order passed by the BIFR and Respondent No.2 and remanded the matter to the BIFR for a fresh hearing and consideration of the scheme suggested by the Union.

(c). Between 2001 and 2003, various schemes were propounded.

6 (a). The Petitioner's case is that he came to know about the aforesaid proceedings in June, 2003 and being interested in acquiring the assets and reviving Respondent No.3, he by his letter dated 27th June, 2003 offered to purchase the property of Respondent No.3 for Rs.6,50,00,000/-. Subsequently on 12th September, 2003 he raised the offer to Rs. 7.00 crore. On 9th March, 2004, the Petitioner filed an application to be impleaded as party to the proceedings. The application was granted.

(b). By an order dated 24th March, 2004, the BIFR rejected the Petitioner's proposal. In view of the subsequent developments, it is not necessary for us to go into the merits and de-merits of the Petitioner's scheme vis-a-vis the one proposed by the worker's union.

(c). The Petitioner filed an Appeal against the order dated 24th

March, 2004. By an order dated 14th May, 2004, Respondent No.2 issued notice in the Appeal and stayed the operation of the order dated 24th March, 2004.

7. Mr.Divan, the learned Senior Advocate appearing on behalf of the Petitioner contended that the impugned order was bad in law as it was passed despite the pendency of the Appeal. The submission is not well founded.

8. The impugned order was passed in view of the fact that during this period, Respondent No.3 had settled the claim of all the secured and unsecured creditors. As a result thereof, the banks had withdrawn their proceedings. We are unable to agree with Mr.Divan that the settlement was clandestine and therefore, liable to be set-aside merely because the Petitioner's Appeal was pending before Respondent No.2.

9. On 8th February, 2005, the Petitioner filed an application before Respondent No.2 for setting aside the consent terms entered into between Respondent No.3 and Bank of India and the secured creditors. By an order dated 10th February, 2005, Respondent No.2 passed an order directing maintenance of status-quo as on 14th May,

2004 as far the assets of Respondent No.3 were concerned. The Writ Petition filed by Respondent No.3 against this order was dismissed by a Division Bench of this Court.

10. This then brings us to the Miscellaneous Application filed by Respondent No.3 on 4th May, 2005 before Respondent No.2 in which the impugned order was passed. Respondent No.3 filed this application for being discharged from the purview of the said Act on the ground that it had raised substantial funds and had succeeded in settling the dues of the secured creditors and the unsecured creditors. It is in this application that Respondent No.2 passed the impugned order dated 29th June, 2005. By the said order, Respondent No.2 held that Respondent No.3 was no longer sick and that there was therefore no reason why it should continue to be under the purview of the said Act. Respondent No.3 allowed the application and discharged the Company from the purview of the said Act.

11. We are in respectful agreement with the impugned order. Upon the net worth of Respondent No.3 turning positive, it was, to say the least, open to Respondent No.2 to discharge Respondent No.3 from the purview of the said Act. We will for the purpose of this

case presume that Respondent No.3 did not ispo facto cease to come within the purview of the Act even though its net worth was no longer equal to or less than its losses. It was for Respondent No.2 in any event to decide whether or not Respondent No.3 should therefore be deemed to continue to be within the purview of the Act. Mr.Divan did not challenge the decision in this regard to wit it was not his case that the decision was wrong on merits.

12. The application was supported by the workers of Respondent No.3 as well as all the secured creditors. The Petitioner is the only person, who opposed the same. The Petitioner is not even a creditor of the Company. He is a stranger to the Company, to its creditors, to its shareholders and to the workers.

13. It is true that the funds for discharging the liabilities by Respondent No.3 were raised by the allotment of new shares of Rs.7,15,00,000/- . We do not see how the same can be termed as illegal. It is a valid mode of raising funds including for the purpose of discharging the liabilities of the Company.

14. Even assuming that all the observations in the impugned order are for some reason not sustainable, we find that the allegations

in the Petition against Respondent No.2 of prejudice and bias are unwarranted and uncalled for. Mr.Gehlani, the learned counsel appearing on behalf of Respondent No.3 rightly contended that the allegations ought to be rejected. He also rightly contended that the allegations of the hearing being a farce or a mockery of the proceedings, were equally unfounded.

15. Mr.Gehlani correctly submitted that this was not a case where under Section 18 of the said Act any other scheme was approved in preference to the Petitioner's scheme. In such a case, it may have been open for the Petitioner to contend that the authorities under the Act wrongly opted for one scheme against other. However as the question does not arise before us, we refrain from expressing any opinion in this respect.

16. In the circumstances, the Petition is dismissed. The Petitioner shall pay the costs of this Petition fixed at Rs.10,000/- each to Respondent Nos.1 and 3.

CHIEF JUSTICE

S.J. VAZIFDAR, J.